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GMA
The Association of Food, Beverage and Consumer Products Companies

GMA Testimony Before Michigan House Commerce Committee in Opposition to State Mandated Country of Origin Labeling (HB 4814)

Good morning. My name is Kevin Fisk. I am Director of State Affairs for the Grocery Manufacturers Association (GMA). I am pleased to be here today on behalf of GMA and its member companies and to respectfully register our opposition to House Bill 4814, which mandates the labeling of the country of origin for "perishable food items," mouthwash, toothpaste, or any other product intended for human oral hygiene.

GMA represents the world's leading food, beverage and consumer products companies. The Association promotes sound public policy, champions initiatives that increase productivity and growth and helps to protect the safety and security of the food supply through scientific excellence. In Michigan, GMA member companies operate 43 facilities with nearly 4,700 employees.

Federal laws already set requirements for identifying the country of origin of imports, including food products, thus making HB 4814 unnecessary. Any articles (food, personal care products, DVD players, automobile parts, etc) that are imported into the United States must be labeled with the country of origin of that article. These are Customs Service requirements of very long standing, and are outlined in federal regulations at 19 CFR Part 134. Just about every country in the world has a similar requirement. There are some elaborate international and national standards for determining the origin of articles, considering that ingredients and components often are globally sourced.

HB 4814 is unnecessary, and probably would conflict with federal rules and policies, as well as the commerce clause and supremacy clause of the Constitution. The commerce clause of the U.S. Constitution prohibits states from imposing undue burdens on interstate or foreign commerce. During the 1960s and 1970s, the courts struck down several state labeling laws similar in nature to HB 4814. In these cases, the court found that the significant financial and procedural burdens on processors, manufacturers, and retailers imposed by the laws were much greater than the benefits to the state or its citizens. In addition, for both Customs purposes and the recent Farm Bill requirements, country of origin labeling is turf well staked out by the US Congress. Primacy would be an issue in this case.

If an article is manufactured in the USA, origin labeling is not required (except for certain specific foods under USDA-COOL provisions). If an article is manufactured in the US, and the manufacturer elects to label it "Made in USA" or words of similar meaning, a Federal Trade Commission (FTC) policy is triggered.

Foods that are not mandated to have country of origin labeling under federal law, and labeled with US country of origin, would be subject to a Federal Trade Commission policy on making US origin claims. The FTC policy is one reason why there are not so many "made in the USA" claims. The FTC policy holds that, unless appropriately qualified, "made in the USA," means that the product is all or virtually all of US origin. Therefore, for banana yogurt made in the USA, the FTC policy would mean you would have to say it is "made in the USA from US ingredients and imported bananas." The FTC policy affects all products, including the oral hygiene products in HB 4814.

From a federal standpoint, a state requirement to label a product as having US origins would be considered "voluntary" at the federal level, since those origin statements would be federal claims. It is inconceivable that the FTC (or any other federal agency) would recognize the right of the state to mandate this kind of country of origin labeling. This is a subject of international trade and federal policy. Undoubtedly, the FTC would also continue to insist on appropriate qualification. FTC does not have a problem with states setting up state-made programs, but there would be a huge problem if states mandated origin labeling of items in interstate trade or international commerce.

HB 4814 has a very broad reach, far broader than the federal requirements for country of origin labeling. The federal law (USDA-COOL) limits mandatory country of origin labeling to specific commodities, including anything covered by the Perishable Agricultural Commodities Act (PACA), which covers fresh and frozen fruits and vegetables.

One of the essential elements of perishability, without a specified definition, is the conditions of storage or holding. That element is not specified in this bill language. Therefore, something that should be kept under refrigeration would be perishable, within the meaning of this bill, if it were not held under refrigeration. This might also apply to something that is shelf-stable when sealed, but would become perishable after opening unless it was refrigerated. For example, jelly will start to grow mold within 90 days if opened and not then refrigerated.

While we believe the bill is a well-intentioned attempt to educate consumers and to promote domestically produced goods, GMA believes the requirements of HB 4814 would be unenforceable not to mention impractical and costly to both the manufacturer and the consumer.

For the reasons cited above, GMA must oppose HB 4814, and respectfully requests your NO vote.